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Certification of Islamic Marriages in Nigeria: Realities, Challenges, and Solutions

by Halima Doma-Kutigi



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by Halima Doma-Kutigi*

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Abstract

The Nigerian Constitution guarantees the rights to have a family life, and freedom of religion. To this end, it recognizes three forms of marriage, namely customary marriage, Islamic marriage, and statutory marriage. While statutory marriage is required to be registered by law, there is no law necessitating the registration of customary or Islamic marriages. Yet in recent times, statutory marriage has gained popularity amongst Nigerians regardless of cultural or religious affiliations. This development is linked to modernization, the requirement to prove marriage for official transactions, and a perceived protection that documentation from the marriage registry offers against socio-legal challenges such as guardianship of children, increase in interfaith marriages, immigration, protection against arbitrary divorce, etc. Thus, it is now common to find couples who may have contracted customary or Islamic marriage combining it with statutory marriage thereby giving rise to a multi-tiered or double-decker marriage which seems to have emerged as a fourth type of marriage in Nigeria.

Drawing on current literature and empirical research using qualitative methods, this study examines the systems of marriage in Nigeria while placing the spotlight on Islamic marriages that are accompanied by statutory marriage. The pattern of marriage registration among the Muslim community is investigated in order to understand its possible link with the growing popularity of multi-tiered marriage among Muslims in Nigeria. The study then reflects on the legal implication by probing potential conflict situations between certain provisions of the Marriage Act and basic ideals of Islamic law. It concludes by calling for the compulsory registration of all types of marriages in Nigeria within a unified system.

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I. Introduction

The sanctity of marriage is a well-established standard globally, and matrimonial relationships are universally recognized and respected as a necessary prerequisite for the establishment of a legitimate family. Marriage is a social institution which is guided by the socio-cultural and religious norms in every society. Where a nation is populated by people of different ethnicities and religions, the recognition and application of different systems of law will naturally be required pertaining to their respective customs, and this reflects mostly in the forms of their ceremonies including marriage.¹

Nowhere does this ring truer than in Nigeria, Africa's most populous country with an estimated population of 184 million people.² It is also one of the most ethnically diverse countries in the world with well over 250 ethno-linguistic groups, some of which are larger than many sovereign states in Africa³. Roughly half of the population in the country is Muslim, followed by a large percentage of Christians, and a minority population of traditional religious practitioners and atheists.⁴ Following the multiethnic and multi religious nature of the country, the Nigerian Constitution⁵ sanctions three types of marriages, namely statutory marriage, customary marriage, and Islamic marriage; which are acknowledged as distinct and separate from each other.⁶

In recent times, statutory marriage has gained popularity amongst Nigerians regardless of cultural or religious affiliations due to the protection it offers against socio-legal challenges such as the need to prove marriage for purposes of official transactions, increase in interfaith marriages, immigration, long distance marriages, protection against arbitrary divorce, etc.⁷ Thus, it is now common to find couples who may have contracted customary or Islamic marriage applying to contract statutory marriage, thereby engaging in multi-tiered contracts by combining marriages under different systems of law,⁸ and thus subjecting the regulation of their family life to multiple systems of law.

Following the enumerated problems above, this study sets to examine the ensuing questions:

- i. What is the pattern of registration of Muslim marriages in Nigeria; and which instruments are available to generate documents for marriages conducted under traditional Islamic marriages in order to make them accepted within other traditions and societies?
- ii. What is the rate of Muslim couples that engage in multi-tiered marriages, and what are their reasons for doing so?

¹ AGBEDE ISAAC OLUWOLE, *Themes on Conflict of Laws*, Lagos 1989, at 6-7.

² National Population Commission, Nigeria, <www.population.gov.ng> (last accessed 11 March 2019).

³ World Directory of Minorities and Indigenous Peoples <www.minorityrights.org> (last accessed 8 March 2019).

⁴ See *supra* n. 3; see also AN-NA'IM ABDULLAHI AHMED (ed.), *Islamic Family Law in a changing World: A Global Resource Book*, London 2002, at 299.

⁵ Constitution of the Federal Republic of Nigeria 1999.

⁶ Accordingly the formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law, including matrimonial causes relating thereto are in the Federal Exclusive Legislative List.

⁷ RIFATU ABDULHAMID/IMAM ABDULRAHIM SANUSI, *Challenges and Negative Effects of Divorce Among Muslim Women in Northern Nigeria*, *Journal of Arts & Humanities*, Vol. 5, No. 11 (2016), 13-25.

⁸ Marriage Act, Cap 212 LFN 1990.

- iii. How does 1 and 2 above impact on rights and duties of the parties in marriage, divorce, and inheritance?

II. Literature Review

1. Definition of Marriage

Marriage is defined in Black's Law Dictionary as the legal union of one man and one woman as husband and wife.⁹ Lord Penzance also defined marriage in *Hyde v Hyde* as "[...] the voluntary union for life of one man and one woman to the exclusion of all others".¹⁰ For a long time, this definition was commonly accepted in many parts of the world; however, it now seems to be obsolete. Notably, those who contract marriage for short term objectives in order to achieve a particular purpose, and same-sex marriage cannot fall under the definition of marriage by Lord Penzance. Furthermore, although the definition by Lord Penzance is similar to the one under the Nigerian Marriage Act,¹¹ it must clearly be stated that this definition does not strictly speaking hold true because it fails to accommodate customary or Islamic marriages, which are polygamous in nature.

Nwogugu describes marriage as "[...] a universal institution which is recognised and respected all over the world as a social institution founded on, and governed by the social and religious norms of society".¹² This clearly implies that any marital union must and should be socially approved, but the acceptable process and medium of social approval has become a contentious issue in pluralistic societies like Nigeria. This view covers an aspect of the study.

2. Sources of Family Law in Nigeria

Tobi identifies the sources of Nigerian family law as: the Nigerian Constitution of Nigeria; customary laws that have been in existence from ancient time; Islamic law that is universally applicable among Muslims; and received English law brought into the country by the British colonialists. Other sources include international law, case law, and legislation.¹³

He acknowledges that though Nigeria is now independent, the state's legal system is modeled after the British legal system, and the body of English laws imposed by the colonial masters still plays a major role in our system of law.¹⁴ Accordingly, family law in Nigeria is a subset of the legal system, and thus shares the same sources, development with the general legal system in the country. The author further narrates that before the British came into Nigeria, the natives had different systems of law governing their affairs, including marriage, and besides the system operating under the traditional customary law which is indigenous to the people, there were also rules of Islamic law. He noted that Islamic law is not indigenous to any tribe and is especially practiced in the areas presently within the northern region and some south-western

⁹ BLACK H.C., Black's Law Dictionary with Pronunciations, 6th ed., St. Paul 1990, at 972.

¹⁰ (1866) L.R.1 PD. 130, at 133.

¹¹ See Section 27 of the Marriage Act Cap. M6, Laws of the Federation of Nigeria, 2004; See also Sections 33(1) and 39 of the same Act.

¹² NWOGUGU E. I., Family Law in Nigeria (Revised Edition), Ibadan 1996, at 5.

¹³ TOBI NIKI, Sources of Nigerian Law, Lagos 1996, pp 25-74.

¹⁴ See TOBI, *supra* n. 13, at 34.

parts of Nigeria; but by virtue of Section 2 of the Native Courts Ordinance 1914, Islamic law was categorized as customary law in Nigeria.¹⁵ This development has always been a subject of debate. While some authors like Eniola¹⁶ and Adaramola¹⁷ consider customary law in Nigeria as consisting of both native law and Islamic law, others like Tobi,¹⁸ Ambali¹⁹ and Yakubu²⁰ argue that Islamic law operates as a distinct system from customary law. Ambali suggests that the classification of Islamic law as a form of customary law in Nigeria reflects an unaccommodating approach to Islamic law, and concludes that notwithstanding challenges to the application of Islamic law in the country, it still endures as a system of law and is accordingly recognized by Section 275 of the Constitution of the Federal Republic of Nigeria 1999. Citing the decision in the case of *Khairie Zaidan v Fatimah Khalil Mohssen*, he further concludes that Islamic law is the personal law of Muslims in Nigeria and it operates as a distinct legal system.²¹

3. Systems of Marriage in Nigeria

Nnamani identifies three systems of marriage in Nigeria: statutory or registry marriage, customary marriage, and Islamic marriage.²² These three forms of marriage are fully recognised as distinct and separate from each other by Nigerian Law.²³ The laws regulating marriage in Nigeria are the Marriage Act, which regulates statutory marriage; customary law (of the various ethnic groups in Nigeria), which regulates customary marriage; and Islamic law, which regulates Islamic marriage.

a) Statutory marriage: This form of marriage is contracted under the Marriage Act, a federal enactment designed for the celebration of voluntary union between a man and a woman to the exclusion of all others during the continuance of the marriage.²⁴ This type of marriage, which is also referred to in Nigeria as “registry marriage” or “marriage under the Act”, is monogamous in nature; thus, parties to this union must not have been previously married to any other person. Furthermore, a party cannot during the lifetime of the other party to the marriage purport to marry some other person, whether under customary law or under the statute unless this marriage has been validly dissolved by a court of competent jurisdiction. Thus, Section 33(1) of the Marriage Act provides that: “No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person to whom such marriage is had.” Also, the marriage must not be between parties related by blood or marriage.

Christians in Nigeria go through statutory marriage in the Marriage Registry before proceeding to church for solemnization. However, they do not need to go to the Registry if their church is recognized as a *licensed place of worship*. The licenses for churches to conduct marriages are

¹⁵ See TOBI, *supra* n. 13, at 136.

¹⁶ EMIOLA AKINTUNDE, *The Principles of African Customary Law*, Ogbomosho 2005.

¹⁷ ADARAMOLA FUNSO, *Jurisprudence*, London, 2008.

¹⁸ TOBI, *supra* n. 13.

¹⁹ AMBALI M. A., *The Practice of the Muslim Family Law in Nigeria*, 2nd ed., Zaria 2003.

²⁰ YAKUBU J. A., *Within and Without: The Relevance and Potency of the Law beyond our Frontiers*, Ibadan 2006.

²¹ (1973) 11 SC 1, at 27.

²² EMMANUEL NNAMANI, *Misconceptions and Inadvertences Affecting the Customary Courts System in Nigeria*, NJI Law Journal 2017, at 1323-24.

²³ EMMANUEL, *supra* n. 22.

²⁴ Cap M6 LFN 2004.

obtained from the Ministry of Interior to enable it for the conduction of statutory marriages after the fulfillment of certain requirements.

b) Customary marriage: This is essentially marriage contracted and regulated under the native laws and customs of the various communities in Nigeria. It is the commonest form of marriage in Nigeria and it is recognized under the law as a legitimate matrimonial union. There is no single uniform system of customary law prevailing throughout Nigeria, and so customary laws differ from one locality to another. However, under indigenous or native customary laws of Nigeria, marriage is essentially a union of a man and a woman for the duration of their lives, involving a wider association between two families or sets of families. Thus, customary marriage is conducted as proof to the community that the couple is actually husband and wife; to guarantee the children's parentage; and generally upholding customary values.²⁵

From the foregoing, it is clear that ample allowance and incentive is provided under customary law for polygamy given that there is no limit to the number of wives a man can marry under customary law. The basic requirements of a valid customary law marriage are: capacity,²⁶ consent of the parties and their families, bride price, and the celebration of marriage through a ceremony. The prohibition of marriage between people related by blood or marriage often exists under customary marriages.

c) Islamic marriage: This marriage is conducted according to the tenets of Islamic law. It is also not limited to one man and one woman provided he is capable of meeting the requirements and conditions stipulated under Islamic law. For a valid Islamic marriage, the following conditions must be satisfied: there must be a clear proposal and acceptance, witnesses, bride price, and guardian.

It is emphasized that Islamic law and customary law marriages are in no way inferior in status to marriage contracted under the Act. Instructive in this regard is the Supreme Court case of *Jadesimi v. Okotie Eboh*, where it was decided that "[...] the status of being married under Islamic law or customary law is well recognized in this country and such marriages should not be accorded any status that is inferior to that of marriage conducted under the marriage act."²⁷

d) Multi-tiered/double-decker marriage: According to Imam-Tamim, a fourth type of marriage subsists in Nigeria, which is a hybrid form of marriage where a single couple combines marriages under different systems of law.²⁸ This practice of contracting multi-tiered marriage by the same couple is what Onokah terms "double-decker marriage", and which she defines as "[...] involving the celebration by the same couple of a marriage under one system and their subsequent marriage under another system".²⁹ The author posits that the Nigerian Marriage Act has given validity to this practice by enabling those who are married under customary law to marry each other under statute law. The accommodation of a multi-tiered marriage contract

²⁵ ONOKAH M. C., *Family Law*, Ibadan 2003, at 144-146.

²⁶ The parties to the marriage must be of marriageable age. Although no custom expressly states any age for marriage, the Child's Right Act provides that 18 years is the minimum age for any marriage.

²⁷ (1996) 2NWLR (Pt 429) 128, at 142.

²⁸ IMAM-TAMIM MUHAMMAD KAMALDEEN, A doctrinal review of literature on multi-tiered marriage in Nigerian family law, presented at the Postgraduate Colloquium on Innovation in Postgraduate Research, Organised by Goal Centre, Islamic Science University Malaysia (USIM) on 10 June 2015.

²⁹ ONOKAH, *supra* n. 25, at 143.

under Nigerian family law can also be deduced from the provision of section 35 of the Marriage Act 1914 which provides to the effect that couples are not allowed to conduct any other form of marriage(s) after the celebration of marriage under the Act either with themselves or with a third party. Any such marriage conducted is pronounced null and void and punishments are provided in sections 47 and 48 of the Marriage Act 1914. The Act however permits “customary law” marriage as far as it is between the same couple married under the Act. As at 1914, the term customary law was intended to include Islamic law.³⁰

Many Nigerians conduct statutory marriage mainly for its perceived “legality”, monogamous security, the official purpose that the certificate serves, urbanization, status symbol, etc.³¹ There is also a general impression that couples who engage in several forms of marriage are somehow “more married” and thus are entitled to greater protection than those who enter into traditional marriage.

4. Issues and Implications of Multi-Tiered Marriages under Nigerian Family Law

Imam-Tamim examines the legal predicaments that could arise in respect of marital causes between multi-tiered marriage couples by particularly relating to the question of which distinct system of family law governs a relationship.³² Each of the different systems of family law has its own peculiar understanding of marriage rules and application. He identifies the potential conflict incidents including ownership of matrimonial property acquired during the subsistence of such marriage, termination of the marriage between the parties, guardianship and custody of children born of a marriage, etc.

In addressing the legal predicaments, Kolajo notes that ordinarily where customary law conflicts with a statute the provision of the statute shall prevail.³³ However, such provision can be deemed to enjoy prevalence over customary law where the statute expressly makes provision to that effect. Tonwe and Edu also support Kolajo’s position on the determinant factor for the superiority of statute over the customary law.³⁴

In contributing to the debate, Onokah streamlines two theories that guide the courts in resolving the conflict of law issue that may arise in the multi-tiered marriage.³⁵ These are the co-existence theory and the conversion theory. The conversion theory states that the customary marriage merges (converts) into the statutory marriage, and that dissolution of the statutory marriage brings an end to the marital relation between the parties. On the other hand, the co-existence theory advances that both marriages co-exist and thus in the event of dissolution separate actions must be taken in order to dissolve both marriages: in the case of the statutory marriage a decree of divorce issued by a High Court, and in case of a customary law marriage by an extra-judicial act of refund of bride price or by judicial divorce by a customary court. This view is supported in the case of *Ohochukwu v Ohochukwu* where the question arose whether the English Court had jurisdiction to dissolve the two forms of marriages between the parties. Wrangham J. granted a decree nisi dissolving the subsequent English marriage and stated

³⁰ This intention was conveyed in Section 2 of the Native Court Ordinance 1914.

³¹ ONOKAH, *supra* n. 25, at 147-151.

³² IMAM-TAMIM, *supra* n. 28.

³³ KOLAJO A. A., Customary Law in Nigeria through Cases. Revised Edition, Ibadan 2005.

³⁴ TONWE S. O./EDU O. K., Customary Law in Nigeria, Lagos 2017.

³⁵ ONOKAH, *supra* n. 25, at 153.

that, “[...] the Nigerian marriage must be regarded as polygamous marriage over which the court does not exercise jurisdiction.”³⁶

Although these theories seem to have aided the courts to some extent, it appears that the debates have still not been settled because the differences between all the systems of marriages are so significant that it is incomprehensible for one form to be subsumed under another.

Perhaps the only treatise on Islamic family law in Nigeria that pointedly addresses multi-tiered marriage is authored by Ambali. He examines the implication of contracting this kind of marriage from the Islamic law perspective with a focus on its effect on succession, and observes that although Islamic law recognizes monogamous marriage (which is the essence of the Marriage Act), the converse is the situation in the Marriage Act which shuts Islamic law out of the lives of the Muslims who enter into statutory marriage contracts.³⁷ Thus, Section 36 (1) of the Marriage Ordinance 1958 is to the effect that when a person who was subject to Islamic law marries under the Ordinance and dies intestate, his legacy will be distributed in accordance with common law. This provision was applied in *Adesubokan v Yinusa* where it was held that a Muslim who contracted marriage under Islamic law but wrote a will in accordance with the Wills Act must be deemed to be governed by common law.³⁸

Ambali further reasons that the laws of marriage and succession constitute part of a Muslim’s faith, which is not supposed to be varied by human whims and caprices; therefore, any Muslim who marries under the Marriage Act in Nigeria rejects the injunctions of Allah regarding marriage and succession since forcing oneself to monogamy when there are circumstances that require a man to take additional wives amounts to making something unlawful (*haram*) for himself which Allah has made lawful (*halal*) for him. Moreover, a Muslim never dies intestate as the manner of distributing a Muslim deceased’s property is clearly explained by Islamic law; therefore, a Muslim who marries under the Marriage Act has subjugated the rules of succession in Islamic law for the rules of succession under common law, which is applied through the administration of estates laws of various states in Nigeria.³⁹

It is observed that the issues presented by the author are legitimate; however, his discourse in the treatise is limited to the issue of succession. Nevertheless, this is the only treatise on Islamic family law in Nigeria that pointedly addresses this issue.

5. Registration of Marriage in Nigeria

Boparai notes that of all forms of marriages recognized in Nigeria, it is only the statutory marriage (under the Act) that is automatically registered with certificates issued to the parties.⁴⁰ This observation deserves some comment. There is no principle of law which requires the recording of a customary law or Islamic marriage; therefore, proof of such marriage involves many more difficulties than a proof of statutory marriages. Although the preliminaries leading to marriage and the marriage itself are marked by public ceremonies, which serve as evidence

³⁶ (1960) 1 All ER 253.

³⁷ AMBALI, *supra* n. 19.

³⁸ (1973) 3 UILR 22 or (1971) NNLR 77.

³⁹ AMBALI, *supra* n. 19.

⁴⁰ BOPARAI HARINDER, The Customary and Statutory Law of Marriage, The Rabel Journal of Comparative and International Private Law, Vol. 46.3 (1982), 530-557, at 548.

of the marriage, the value of such evidence is lessened because it places reliance on the memory of witnesses who may eventually be unreliable or even dead.⁴¹

Thus, over time efforts have been made around the country to provide for the registration of customary law marriages. To this end, the local government laws in most states of the federation have authorized local authorities to make by-laws for the registration of customary law marriages within their respective jurisdictions. For example, the Registration of Marriages Adoptive By-Laws Orders, which are applied in Lagos, Ogun, Oyo, Ondo and Bendel States, require a customary law (which includes Islamic law) husband to register the marriage in the relevant local government office within one month of its celebration.⁴² It also states that any person may on the payment of the appropriate fees inspect or make copies of the contents of the marriage register. The records, however, may be extremely unreliable because the registrar can only record such particulars as are supplied to him. Many of the by-laws do not stipulate any penalty for non-compliance of the requirements, thereby reinforcing the belief held by many people that registration is not necessary.

This is the general position in the predominantly Muslim northern part of the country. Many Muslims believe that in an Islamic marriage, paper work is not necessary and registration is not a pre-condition for marriage. However, Imam-Tamim points out that there are no provisions in the Qur'an or Sunnah relating to registration of marriage, nor are there any prohibitory provisions.⁴³ Therefore, it has been argued that the purpose for which Muslims conduct multi-tiered marriage is to protect against modern challenges and perceived injustices faced by unregistered marriages and, as such the obligation to register marriage is important as it is for the benefit (*maslahah*) and protection of the society at large. The emerging trend now indicates that Muslim couples are becoming more aware about the need for marriage registration owing in most cases to the official purpose that marriage certificate will serve. Hence, in most urban cities in the North the cleric (imam) or mosques, which conduct the *nikah*, will register the marriage and give the couple a corresponding certificate. The question that arises here is how much recognition is given to such certificates in Nigeria and abroad, especially when compared to the certificate issued for statutory marriage? This issue is addressed in the ensuing parts of the article.

All the texts reviewed above attempted to examine the nature and types of family law in Nigeria and the emerging trend of couples engaging in multi-tiered marriage. It is however noted that most of the literature reviewed were narrow in scope in the sense that they were only limited to statutory law and customary law marriages leaving out Islamic law marriage. It is also observed that multi-tiered marriages portend certain legal problems, and though scholars and jurists of family law in Nigeria acknowledge this fact, very few of them have engaged in detailed analysis of the problems that could be caused by this type of marriage arrangement. Most of the reviewed literature discussed multi-tiered marriages involving customary marriage and statutory marriage, without looking into the Islamic/statutory model of such marriage. Thus, the literature reviewed above are narrow in scope as they exclude the practice of

⁴¹ BOPARAI, *supra* n. 40, at 553.

⁴² Western Region of Nigeria Legal Notice (in Western Region Gazette), No. 4 of 1957; see also Laws of Eastern Nigeria, 1963, Cap. 79, ss. 84, 90; and Laws of Northern Nigeria, 1963, Cap. 77, s. 38.

⁴³ IMAM-TAMIM, *supra* n. 28.

multi-tiered marriage involving couples who have combined both Islamic marriage and statutory marriage, and this is the gap which the present research seeks to fill.

III. Methodology

This is a qualitative study that employs both doctrinal and non-doctrinal methods of legal research. For the doctrinal method, the study reviews the library and online based literature available on the types, processes, and registration patterns of marriages in Nigeria with particular emphasis on Islamic marriages. For the non-doctrinal method, targeted participants were selected through convenience and purposive sampling methods. Key informants were also used based on their role in the community, and knowledge about the research interest. The research was conducted in Abuja because of its metropolitan nature, and the residents are a typical representation of the heterogeneous nature of Nigerian society.

In-depth interview was conducted on targeted participants who were selected through convenience and purposive sampling methods. Furthermore, key informants such as imams, marriage registrars, court staff, qadis, etc. were interviewed based on their role in the community, or knowledge about the research interest. Information was also collected from the marriage registry in Abuja, the Federal Capital Territory. Thus, 50 married Muslims participated in the study from different societal classes, ranging from the educated to the uneducated and also from the working to the non-working class. Their age range was between 21 to 60 years. This age group was considered appropriate for the study given that most of the marriages in Nigeria occur between the aforesaid ranges. More women than men were interviewed (30 women and 20 men) because it is generally believed women are more affected by lack of registration of marriages. Ten key informants including imams, marriage registrars, court staff, lawyers, qadis, etc. also shared their practical knowledge and experience on the research interest.

IV. Findings and Discussions

1. What are the Factors that Couples Consider when Deciding what Type of Marriage to Contract?

This study found that the three types of marriage persisting in Nigeria – statutory, Islamic and customary marriage – are all legally recognized, although they differ considerably in character and consequences. Nevertheless, individuals decide on a preferred type of marriage based on factors such as traditional beliefs, religion and level of exposure of both the couples and their families. According to a respondent:

“When it comes to marriage, you should know that Nigerians as most Africans will always exhibit their traditional or religious beliefs. All we know is that if you are from a Muslim family, you do *nikah* and if you are from a Christian family, you go to church for marriage blessings. Those that are more enlightened from the south also go to the registry afterwards. Even if you do not practice any faith, in our society, you have to be associated with one. I lived with a certain family for several years and although I never saw them go to church or mosque during this period, I concluded that they are Muslims when they sent me an invita-

tion to their daughter's wedding, and I saw the word '*nikah*' on the wedding card." (49-year-old female business woman)

This study also found that all Muslims go through the Islamic marriage ceremony, known as *nikah* or *fatiha*. All the respondents in Abuja consider the *nikah* as the only way they can marry legitimately. Furthermore, most of them said that they expect their marriage to be regulated by Islamic family law. A respondent rationalized that:

"Islam is a complete way of life, it dictates how we live from the time we are born till the day we die. Therefore, a Muslim will be going against the dictates of his religion if he decides to celebrate any other form of marriage besides *nikah*." (43-year-old male teacher)

An imam (who also happens to be a qadi) interviewed in the course of this study briefly summarized the *nikah* procedure as follows:

"*Nikah* is a very brief and straightforward procedure that requires the following compulsory ingredients: offer and acceptance, presence of the bride's and groom's guardians, witnesses, and dowry. On the main wedding day, the intending couples and their families meet at the wedding venue (usually the bride's house, mosque or hall). Soon after this, the *nikah* is commenced. There are usually two guardians present at the place, representing the two parties. The amount of *mehar* (dowry), a compulsory amount of money to be given to the bride by the groom is also decided. After this, the officiating imam asks the bride's guardian (*waliy*) in the presence of everybody three times whether the bride accepts the groom as her husband with the decided amount of dowry. After her consent, the groom's guardian is asked three times, whether the groom accepts the bride as his wife with the decided amount of dowry. After his consent, the *fatiha* (the wedding prayer) is recited. This is followed by the recital of the *khutba*, a religious discourse. Blessings are showered upon the bride and the groom for a prosperous married life. The marriage is then announced".

The Imam further explained that to validate the full recognition of Islamic marriage, the Shari'ah Court of Appeal is established by the Nigerian Constitution to decide in accordance to Islamic law any question of Islamic personal law regarding marriage or relating to family relationships; any question of Islamic personal law regarding succession where the deceased person is a Muslim; and in the case where all parties to the proceeding are Muslims and request the court that hears the case in the first instance to determine that case in accordance with Islamic personal law.

From the above discussion, it is clear that in Nigeria Islamic marriage is a legal marriage that protects all in it. Thus whether or not it is registered, the law fully recognizes it and nobody is disenfranchised in any way on the basis of having conducted an Islamic marriage rather than a statutory marriage.

2. Pattern of Registration of Muslim Marriage

The study found that there is no uniform law for the registration for all forms of marriages in Nigeria. While statutory marriage comes with registration, couples who contract either customary or Islamic marriage have to take further steps to register the marriage. Thus, very few couples register the *nikah* immediately, and most do not bother to register the *nikah* unless the

need arises for them to do so in the future. Out of the 50 respondents in the study, 19 of them (38%) registered their *nikah* immediately after the ceremony, and at the venue; notably, those that gave this response all got married after the year 2000. This indicates that registration of Islamic Marriage is a fairly recent phenomenon in Nigeria.

The research also found that Islamic marriages do not have to take place in a registered venue. However an authorized Muslim cleric known as imam can conduct the *nikah* usually in the bride's father's house, mosque, or an Islamic Centre. Out of the 50 respondents in this study, 27 (54%) said that their marriage was conducted at home while the remaining 23 marriages (46%) were at the mosque or the Islamic Centre. It was further found that out of the marriages conducted in the mosque, 15 were immediately registered in the marriage record book at the mosque, while only 3 of the marriages conducted at the bride's home were registered through the officiating imam.

The findings above indicate that there is no specific or compulsory system of registration for Muslim marriage; however, the venue of the marriage influences the chances of registration. Thus, Muslim weddings are more inclined to be registered when conducted in a mosque, rather than at home. The registration done by the mosques is also a fairly recent development. According to an imam:

"It is modernization that has brought about the need for registration of marriages. In my experience of over 20 years as an Imam in this mosque, it was only a few years ago that we decided to start registering marriage and issuing certificates to the couples, and we had to do this because people started asking for certificate for one reason or the other. I understand that even the Al Noor Mosque, National Mosque and NASFAT⁴⁴ Mosque are also registering all the marriages they conduct, and they also give certificates to the couples. I don't think that the smaller mosques are doing this yet." (60-year-old male imam)

It can be deduced from the above comment that the high rate of unregistered Muslim marriages is now a matter of concern to Muslim scholars who worry that this may adversely affect Muslim integration into broader modern society. Thus, mosques and Islamic societies have gradually begun to register Islamic marriages conducted under their auspices and also issue marriage certificates; however, this is not done systematically as there is no uniform format and each mosque has its distinct style of registration and certification.

Upon further research, the study also uncovered the difference in the level of education between those who had registered their *nikah* and those that had not done so. Those who had registered their marriages were more educated than those with unregistered marriages. Similarly, there is a marked difference between rural and urban lifestyles in Nigeria. Those that reside and work in urban areas are more likely to register their marriages. As one respondent stated:

"In this day and age, any married person must have some document to show as evidence of the marriage. You might need such certificates to travel or conduct certain administrative

⁴⁴ Nasrul-lahi-li Fathi Society of Nigeria (NASFAT) is a Nigerian Muslim association with over one million members.

procedures. I remember being posted to Enugu during my NYSC⁴⁵ in 2015. Then, I had just gotten married and my husband was in Kaduna, so I applied for redeployment to Kaduna. The Officer in charge of redeployment asked me to attach my marriage certificate to my application but I explained that I had none, and the mosque where I conducted the *nikah* did not register the marriage. I was then advised to go to the High Court and fill a declaration of marriage form as proof of marriage which I then presented to the NYSC. Some of my colleagues with similar problem collected theirs from the Shariah Court of Appeal.” (29-year-old female lawyer)

A divergent view was expressed by another participant whose highest level of education is secondary school. She said:

“What do I need a marriage certificate for? Anyone or any authority that needs proof that I am married should just go and ask my family head who was my guardian during the *nikah*. The imam who conducted the *nikah* and the witnesses who attended are also alive to testify.” (33-year-old housewife)

From the foregoing comments by the lawyer respondent, it is clear that even the courts recognize that most Islamic marriages are not registered and yet people require marriage certificates to pursue some administrative processes such as NYSC documentation, school documentation, certain transactions in banks, to process travel documents, etc. Hence, alternative arrangements have been made by the courts in the form of “marriage declaration” and “affidavit of marriage” which serve as proof of marriage in the absence of a civil marriage certificate. A nagging problem with this arrangement is that it is prone to abuse since unlike the civil marriage registry the courts do not have a standard procedure to verify the claim of the person making the declaration of marriage. A court staff opined that:

“In this office, we issue affidavits of change of name and declaration of marriage every day. Some say they were asked to bring it by their school or work, or some will tell you it is for visa application. We just give them, even though you can’t be sure if they are saying the truth or not. But it is an affidavit... So they pay the necessary fees, produce their photographs, we administer the oath and give them the documents.” (50-year-old male commissioner for oath at High Court of the Federal Capital Territory, Abuja)

Another finding of this study is that whereas all marriage certificates issued either by the mosques or courts in form of marriage affidavits or declarations are generally accepted everywhere and for every purpose within Nigeria. The same weight is not attached to such documents abroad and thus they are not automatically accepted as evidence of marital status for international transactions and documentation. For instance, to qualify for a marriage-based visa to join a spouse abroad, most countries would require a certificate of a *legal* marriage. A legal marriage in this sense is one that is officially recognized by the government in the country or state where you were married. This usually means that an official record of the marriage was made or can be obtained from some government office. Therefore, a copy of the civil mar-

⁴⁵ The National Youth Service Corps (NYSC) is a scheme set up by the Nigerian government to involve Nigerian graduates in nation building and the development of the country. Graduates of tertiary institutions are required to take part in the National Youth Service Corps program for one year. This is known as national service year.

riage certificate is required, and the only way to obtain this in Nigeria is through the Marriage Registry.

3. How Common is Multi-tiered Marriage Amongst Muslims in Nigeria?

This research established that all Muslims couples in Nigeria conduct *nikah*; however, some still proceed to also contract a statutory marriage in the marriage registry. The study could not find reliable statistics on what proportion of Muslims who get married in Nigeria have both a *nikah* and a civil marriage. In this study 7 out of the 50 (14%) respondents fell into this group. Furthermore, the data collected from the Abuja Marriage Registry revealed that out of a yearly average of 2000 marriages conducted by the Registry; about 40 (2%) involve Muslim/Muslim couples, while 55 (2.75%) involved Muslim/Christian interfaith couples. Commenting on this, a staff of the Abuja Municipal Area Council (AMAC) Marriage Registry said:

“I have been working in this registry for over 20 years, and in the past you will rarely find any Muslim couple coming for registry marriage. But due to modernization and the changing times, we see them now. However, I noticed that they make this request only when the need arises. Some will say it is for visa, or they are relocating abroad and they need civil certificates. One man even told me that only registry marriage is recognised by the law in Britain. We also have Muslims who want to go into interfaith marriage coming for statutory/registry marriage to prove their love and give the women a sense of security. This is because the women always insist that they want to avoid polygamy, and guard against arbitrary divorce.” (53-year-old male AMAC Marriage Registry staff)

The foregoing remarks have thrown light into some of the reasons why Muslim couples go into statutory marriage (legal protection, monogamous security, the official purpose that the certificate serves, etc.), which they all felt that marriage by *nikah* alone could not cover. Some women want to strengthen their legal position by ensuring that they get married under the Act. The non-codification of the Islamic law marriage among the regime of federal legislations inevitably induces some Nigerians to look on it as a mere conventional ceremony and the Act marriage as one with legal force even though this is wrong. Furthermore, the need to setback the potentially polygamous nature of the initial Islamic law marriage is quite common among the educated female class.

Thus, it is noticed that while the legal status of Islamic marriage is not in doubt, the issue of documentation for the purpose of verification can only be addressed at present by the Marriage Registry due to the reliability and objectivity of the Registry Record. This clearly goes to show that the present position as regards to registration of Muslim marriages in Nigeria is unsatisfactory.

An interesting finding of this study is that although the Marriage Act recognizes marriages conducted in *licensed places of worship*, which the Marriage Registry is mandated to register and certify, no single mosque in Abuja including the National Mosque is a licensed place of worship though many churches are. Our research was however unable to find an explanation as to why no mosque in Abuja has approached the relevant authorities for this license.

4. Legal Implications of Islamic/Statutory Multi-tiered Marriage in Nigeria

Multi-tiered marriages accept that each system of family law has its own understanding of marriage rules and has its own independent application. This is bound to have certain legal and social implications especially relating to how rules applicable under the distinct and respective systems of family law should be applied to the parties. Thus, several provisions of the Marriage Act are found to be inconsistent with the rules of Islamic law which may create problems for the couple in future.

One of the issues that could come up in a marriage governed by multiple regimes is determination of status and quantum of ownership of matrimonial property. While the Marriage Act recognizes the right of the wife to claim a part of the matrimonial property, Islamic law leans toward individual ownership of property.

Polygamy is also a problem as the Marriage Act recognizes only monogamy; thus, any Muslim who marries under the Marriage Act in Nigeria confines himself to monogamy. A respondent to this study shares his dilemma:

“I am from Okene but I lived in Lagos for many years before relocating to Abuja. I met and married my wife in 2002 through an Islamic ceremony in Lagos. Although both of us are Muslims, she insisted that we should also go for statutory marriage and I obliged because I loved her and many people in Lagos do this. Our problem started when she heard I was planning to marry a second wife. Now she keeps warning me that I cannot take another wife and if I do she would take me to court and claim all my property and children. I thought of divorcing her through talaq, but I was advised against it by a brother who reminded me that even if I divorce her islamically, she would still remain my wife according to statutory law. Honestly, I feel trapped and regret conducting the statutory marriage.” (50-year-old male civil servant)

Another problematic aspect in respect of this kind of marriage arises from the termination of the marriage. Dissolution of statutory marriage is based on a petition by a party to the marriage stating that the marriage has broken down irretrievably.⁴⁶ On the other hand, dissolution of an Islamic law marriage can occur extra-judicially or by the order of the Shariah Court (judicial divorce). Notably, the majority of divorces of Islamic law marriages occur through the non-judicial unilateral action of one of the spouses, or by the mutual consent of both spouses.

Succession⁴⁷ also presents a problem in the sense that when a Muslim marries under the Act and dies intestate his legacy will be distributed in accordance with common law, which is applied through the administration of estates laws of various states in Nigeria. This was the Court's decision in *Adesubokan v Yinusa*.⁴⁸ although a Muslim never dies intestate as the manner of distribution of his property is clearly established in the Koran.

Guardianship and custody of children born of a multi-tiered marriage are common issues that may arise regarding how to determine the appropriate party to get custody or guardianship of

⁴⁶ Section 15(1) of the Matrimonial Causes Act.

⁴⁷ Section 36 (1) of the Marriage Ordinance 1958.

⁴⁸ See, *supra* n. 38.

the infant. While the issue of guardianship is well established under Islamic law, the Marriage Act relies on the concept of the best interest of a child to determine custody.

Interestingly, even with the potential challenges that may arise as discussed above 43 of the study respondents including some of those who also married in the Registry expressed that they expect their marriage to be regulated by Islamic law.

V. Conclusion

Different social, cultural and legal factors contribute to the type of marriage that Nigerians choose to celebrate. It has been established that all Muslims recognize *nikah* as the principal form of marriage. Nevertheless, modernization has contributed reasonably to the increase in the practice of multi-tiered marriage in the contemporary Nigerian society. However, responses from the interviews in this study suggest that many Muslims who enter a multi-tiered marriage do so out of necessity due to the absence or weak model of registration of Islamic marriages in the country. Consequently, despite its susceptibility to create legal problems that could affect the couples and even confuse the courts the number of Muslims engaged in a multi-tiered marriage is gradually rising and will continue to grow unless a better arrangement is made to adapt to this particular requirement of a modern globalized world.

Accordingly, it is suggested that there is a need for the government to create a unified, efficient and compulsory system for the registration of all types of marriages in Nigeria, which should be adopted throughout the country within the responsibility of the Registry of Marriages. All marriage certificates should also be issued by the same authority, and marriages celebrated outside the country should also be registrable. The existence of such a system will not only help to solve the problems arising from this study, but it will also generate reliable data that can be used to plan better policies and programs for the development of the country.